

US EPA RECORDS CENTER REGION 5



452228

October 31, 2002

Mr. Tom Turner, Esq.
Associate Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, IL 60604-3590

VIA FACSIMILE TRANSMITTAL
AND FIRST CLASS MAIL

FOR SETTLEMENT PURPOSES ONLY

Re: **Old American Zinc Superfund Site ("Site")**
Fairmont City, IL (St. Clair County)
Administrative Order on Consent ("AOC")
Remedial Investigation/Feasibility Study ("RI/FS")

Dear Mr. Turner:

This letter will confirm my October 30, 2002 voice mail message responding to your request that Blue Tee Corp. (successor to American Zinc, Lead and Smelting Company and American Zinc Company of Illinois, and collectively hereafter referred to as "Blue Tee") commit to sign the proposed October 21 draft of the above-referenced AOC to conduct an RI/FS at the Fairmont City Site. As I explained, at this time Blue Tee is unable to respond to your request to commit.

As I have advised you since our negotiations concerning the Removal Action, Blue Tee will only sign an administrative order to conduct an RI/FS if the other two potentially responsible parties, the General Services Administration and Xtra Intermodel, Inc. ("GSA" and "Xtra" respectively) are also subject to the administrative order or subject to a unilateral order to conduct the work. To that end, Dan Pinkston, of the Department of Justice ("DOJ"), and I have been in negotiations to work out a cost-sharing agreement to move forward with this matter. As we advised you on October 21, we did not believe that your October 28 commitment date would allow enough time for the government to address this issue. In fact, no resolution has occurred between the parties, although Dan has promised to send me a position paper on the allocation issue. I hope you

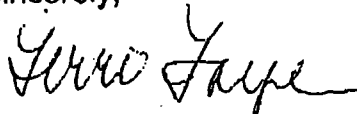
understand that I have no control over the timetable of DOJ. However, it is my opinion that Blue Tee and DOJ are working in good faith.

As you also know, it is Blue Tee's position that Xtra has not negotiated in good faith. There has been little or no negotiation on a cost-sharing agreement and Xtra has advised all parties that it does not intend to sign the above-referenced AOC. Accordingly, I assume, that Xtra will only participate if it receives a unilateral order.

Finally, I have received and reviewed EPA's October 21, 2002 comment letter and revised documents. I was disappointed in the tone and quality of those comments. I have sent your comments and the documents to my clients for review. Blue Tee will respond to your October 21 comments once that review is completed. However, it is obvious that changes will need to be made to the AOC based upon negotiations between Blue Tee and DOJ. Additionally, we will need to discuss your inclusion of the Technical Assistance Plan requirements into this AOC.

Blue Tee remains committed to working with EPA to achieve a fair and appropriate administrative order recognizing the appropriate responsibility of the respective parties. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Terrance Gileo Faye

TGF/ps

cc: D. Pinkston, Esq.
M. Steinberg, Esq.